

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH STONE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C07-0209RSL

ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY

This matter comes before the Court on petitioner's "Notice of Appeal to Ninth Circuit Court of Appeals" which the Court considers a request for a certificate of appealability under 28 U.S.C. § 2253(c). Because petitioner filed his notice of appeal after April 24, 1996, his appeal is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which worked substantial changes to the law of habeas corpus. Under the amended version of 28 U.S.C. § 2253(c), a petitioner may not appeal the denial of a habeas corpus petition unless the district court or the Ninth Circuit issues a certificate of appealability identifying the particular issues that may be pursued on appeal. United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997).

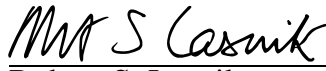
To obtain a certificate of appealability, the petitioner must make a substantial showing of the denial of a constitutional right. "Obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor." Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition

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1 is debatable among reasonable jurists or that the issues presented were “adequate to deserve
2 encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a
3 petition is dismissed on procedural grounds, the Court must determine whether “jurists of
4 reason” would debate (1) whether the petition states a valid claim of the denial of a
5 constitutional right and (2) whether the district court’s procedural ruling was correct. Slack, 529
6 U.S. at 484.

7 Having reviewed the record in this case, including the Report and
8 Recommendation of the Honorable James P. Donohue, the Court finds that the dismissal of the
9 petition is not debatable among reasonable jurists and should not be the subject of an appeal.
10 Petitioner’s request for a certificate of appealability is therefore DENIED.

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12 Dated this 12th day of February, 2008.

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15 Robert S. Lasnik
16 United States District Judge
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